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3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

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6 JAMES E. HERMANSON,

Case No. 3:17-cv-00721-HDM-CBC

7 Petitioner,

8 v.

ORDER

9 ISIDRO BACA, et al.,

10 Respondents.

11 On August 8, 2019, the Court administratively closed this
12 action while Petitioner exhausted his unexhausted claims in state
13 court. (ECF No. 45.) Petitioner has completed his state court
14 proceedings and now moves to re-open these federal habeas
15 proceedings. (ECF No. 50.) Respondents did not respond to this
16 motion and the deadline to do so has expired.

17 **IT IS THEREFORE ORDERED:**

18 1. Petitioner's motion to reopen this action (ECF No. 50) is
19 GRANTED.

20 2. As the stay is lifted by this order, the Clerk of Court
21 will reopen this action.

22 3. Respondents will have 60 days to answer, or otherwise
23 respond to, the amended petition for writ of habeas corpus
24 in this case.

25 4. Petitioner will have 60 days following service of the
26 answer to file and serve a reply brief. If a dispositive
27 motion is filed, the parties will brief the motion in
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1 accordance with Rules 7-2 and 7-3 of the Local Rules of
2 Practice.

3 5. Any procedural defenses Respondents raise to the second
4 amended petition must be raised together in a single
5 consolidated motion to dismiss. Procedural defenses
6 omitted from such motion to dismiss will be subject to
7 potential waiver. Respondents will not file a response in
8 this case that consolidates their procedural defenses, if
9 any, with their response on the merits, except pursuant to
10 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly
11 lacking merit. If Respondents do seek dismissal of
12 unexhausted claims under § 2254(b)(2), they must do so
13 within the single motion to dismiss, not in the answer,
14 and specifically direct their argument to the standard for
15 dismissal under § 2254(b)(2) set forth in *Cassett v.*
16 *Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short,
17 no procedural defenses, including exhaustion, will be
18 included with the merits in an answer. All procedural
19 defenses, including exhaustion, instead must be raised by
20 motion to dismiss.

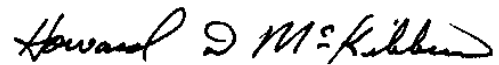
21 6. In any answer filed on the merits, Respondents must
22 specifically cite to and address the applicable state court
23 written decision and state court record materials, if any,
24 regarding each claim within the response as to that claim.

25 7. Any additional state court record and related exhibits must
26 be filed in accordance with LR IA 10-3, LR IC 2-2, and
27 LR 3-3 and include a separate index identifying each
28 additional exhibit by number or letter. The index must be

1 filed in CM/ECF's document upload screen as the base
2 document to receive the base docket number (e.g., ECF
3 No. 10). Each exhibit will then be filed as "attachments"
4 to the base document—the index—to receive a sequenced sub-
5 docket number (e.g., Exhibit A (ECF No. 10-1), Exhibit B
6 (ECF No. 10-2), Exhibit C (ECF No. 10-3), and so forth).
7 If the exhibits will span more than one filing, the base
8 document in each successive filing must be either a copy
9 of the index or volume cover page. See LR IC 2-2(a)(3)(A).
10 8. Notwithstanding LR IC 2-2(g), paper copies of any
11 electronically filed exhibits—for this case—*need not* be
12 provided to chambers or to the staff attorney, unless later
13 directed by the court.

14 IT IS SO ORDERED.

15 DATED: this 10th day of February, 2022.

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HOWARD D. MCKIBBEN
19 UNITED STATES DISTRICT JUDGE
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